

## **REMARKS**

Applicant respectfully requests reconsideration of the present application in view of the foregoing amendments and the reasons that follow.

In the Advisory Action that was received, the Examiner noted that the Applicant's After Final Response of July 18, 2011 was not entered. Accordingly, the amendments presented above are based upon the claims as pending as of the issuance of the Final Office Action on May 16, 2011.

By the present amendment, claims 58, 61, 63, 72-74, 76, 77, 79, 92-95, 133, and 134 are amended, claims 59, 62, 75, and 78 are canceled (claims 1-57, 96-132, and 136 having been canceled by previous amendment), and claims 137-142 are newly added. No new matter is added by way of amendment, claim 74 having been amended by incorporation of claim 75 as indicated in the Final Office Action to be allowable. Claim 76 is amended with respect to antecedent basis with respect to the amendment to claim 74 from which it depends. Claims 137-142 are directed to the compound of Example 4, Applicant's elected species for the purposes of the initial search and examination, which the Examiner has indicated to be free of any prior art. Office Action, section 7.

A detailed listing of all claims is presented with an appropriate defined status identifier. Upon entry of the present amendments, claims 58, 60, 61, 63-74, 76, 77, 79-95, 133-135, and 137-142 will be pending in the application with claims 58, 60, 61, 63-73, 77, 79-95, 134, and 135 withdrawn from consideration as directed to a non-elected invention. Claims 74, 76, 133, and 137-142 are currently under examination.

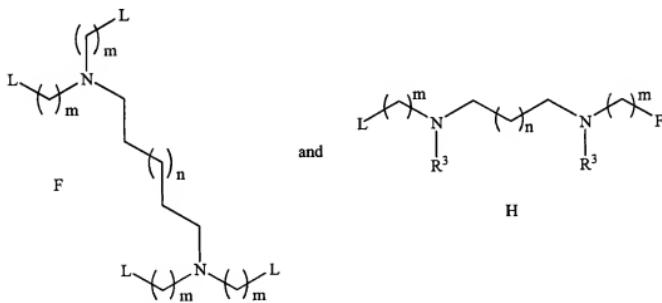
### **Interview**

On August 4, 2011, Applicant's Representative, Jeff Lomprey, and Examiner Jones discussed the reasons for the issuance of the Advisory Action. Applicant's Representative understood the concerns of the Examiner to be that the claims that were requested to be re-joined

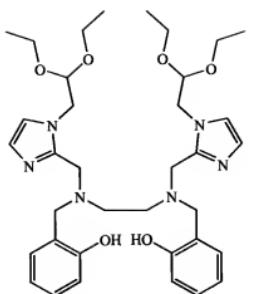
were structurally dissimilar to the claims as presented in pending claims 74, 76, 133, and 137-142. Applicant's Representative pointed out that all presently withdrawn claims belonged to the Examiner's identified Group III (Claims 58-95 and 133) in the restriction requirement of March 23, 2011, and accordingly, at the time of restriction, the Examiner must have believed all the claims in that group to be related. The elected species was to be search for the purposes of the initial search and examination. With the elected species being noted to be allowable, Applicant's Representative contends that other species of Group III should then have been examined. No agreement was reached.

#### **Additional Comments**

Group III encompasses claims 58-95 and 133. The group is directed to compounds of Formula F and Formula H, which the Examiner identified as electable *species* in the original restriction requirement:

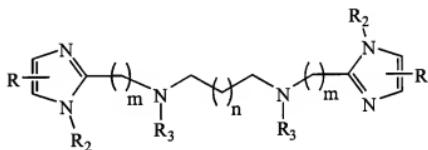
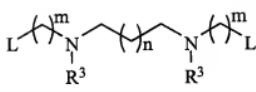
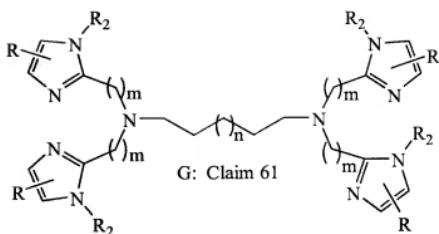
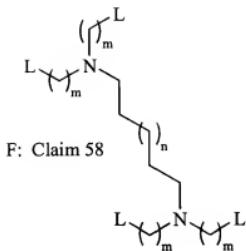


In response to the requirement for a species election, the Applicant initially elected the species of Formula H, and as a single species for the purposes of the search, the compound of Example 4:



The election of this species was only for the purposes of the search. Now that the Examiner acknowledged the patentability of the identified species, and the fact that once a generic claim is found allowable (see Final Office Action asserting that claim 75 was allowable), Applicant believes that all species identified by the Examiner would be examined and rejoined to the application if also found to be allowable.

In the discussion with the Applicant's Representative, the Examiner stated that compounds of claims 58, 61, 74, and 77 were not structurally similar. Below are the structural representations of the four structures:



H: Claim 74

I: Claim 77

As will be noted, the compounds of independent claims 58, 61, 74, and 77 are, in fact, closely related. In Claims 58 and 74, the L groups are either imidazolyl (or oxazolyl), or benzimidazolyl (or benzoxazolyl) groups, and the other substituent is selected from the group designated by L or R<sup>3</sup>. Thus, Claim 61 is sub-set of claim 58; and claim 77 is a subset of claim 74. The greatest difference in the compounds is that claims 58 and 61 require at least a 4 carbon tether between the nitrogen atoms, while claims 74 and 77 require only a 2 carbon tether, however with the selection of n in claims 74 and 77 as being 2 or more, the length of the tether overlaps with those of claims 58 and 61. Applicant asserts that there is actually a great deal of overlap in the structural features and that all of the independent claims should be re-joined to the application as members of Group III as originally set forth by Examiner Jones.

**Rejection Under 35 U.S.C. § 102.**

Claims 74 and 133 have been rejected under 35 U.S.C. § 102(b) as being anticipated by *Chem. Ber.*, 122(5); 969-973 (1989). In view of the incorporation of allowable claim 75 into claim 74, Applicant respectfully traverses this rejection and requests that it be withdrawn.

**Rejoinder**

In response to the restriction requirement of March 23, 2010, Applicant elected Group III, encompassing claims 58-95 and 133. Because all of the outstanding rejections have now been overcome, Applicant requests that the remaining species of Group III be examined, and that all claims of the elected group be allowed to proceed to issuance together. Accordingly, Applicant requests that claims 58-73, 77-95, 134 and 135 be rejoined to the application at the present time.

Applicant believes that the present application is now in condition for allowance. Favorable reconsideration of the application as amended is respectfully requested. The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance the prosecution of the present application.

Respectfully submitted,

Date August 15, 2011

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